

Matrimonial Causes

No. 99 of 1965

An Act to amend the *Matrimonial Causes Act 1959*.

[Assented to 13 December, 1965]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Matrimonial Causes Act 1965*.

(2.) The *Matrimonial Causes Act 1959** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Matrimonial Causes Act 1959–1965*.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by Proclamation.

3. After section 6 of the Principal Act the following section is inserted:—

Polygamous
marriages.

“ 6A.—(1.) Subject to this section, a union in the nature of marriage entered into outside Australia or under Division 3 of Part IV. of the *Marriage Act 1961* that was, when entered into, potentially polygamous is a marriage for the purposes of proceedings under Part VI. of this Act in respect of the union, and for the purposes of proceedings in relation to any such proceedings, where it would have been a marriage for those purposes but for the fact that it was potentially polygamous.

“(2.) This section does not apply to a union unless the law applicable to local marriages that was in force in the country, or each of the countries, of domicile of the parties at the time the union took place permitted polygamy on the part of the male party.

“(3.) This section does not apply to a union where, at the time the union took place, either of the parties was a party to a subsisting polygamous or potentially polygamous union, but this section does apply to a union notwithstanding that the male party has, during the subsistence of the union, contracted, or purported to contract, a further union in the nature of marriage, whether or not the further union still subsists.”

* Act No. 104, 1959.

4. Section 7 of the Principal Act is amended by omitting sub-section (2.). Extension of Act to Territories.

5. Section 8 of the Principal Act is amended— Supersession of existing laws.

(a) by omitting from sub-section (4.) the words “ a marriage is dissolved or annulled by a decree under this Act ” and inserting in their stead the words “ a decree of dissolution of a marriage or nullity of a voidable marriage made under this Act becomes absolute or a decree of nullity of a void marriage is made under this Act ”; and

(b) by inserting after sub-section (4.) the following sub-section:—

“ (4A.) The last preceding sub-section does not—

(a) affect the jurisdiction of a court to make an order in respect of the maintenance of a child of the marriage against a person other than a party to the marriage; or

(b) cause such an order to cease to have effect.”.

6. After section 8 of the Principal Act the following section is inserted:—

“ 8A.—(1.) A court shall not make an order under Part VIII. for the maintenance, custody or guardianship of a child who is, under the law of a State, a ward of the State or a State child or a child who has a similar status under a law of a Territory of the Commonwealth. Child welfare laws not affected.

“ (2.) Nothing in this Act, and no order under this Act, affects—

(a) the jurisdiction of a court, or the power of an authority, under a law of a State to make an order, or take any other action, whereby a child becomes a ward of the State or a State child, or any similar jurisdiction or power under a law of a Territory of the Commonwealth;

(b) any such order made, or action taken, or the operation, in respect of a child in relation to whom any such order has been made or action taken, of the law under which the order was made or action taken;

(c) the jurisdiction of a court under a law of a State or Territory of the Commonwealth to make an order in respect of the maintenance of a child referred to in the last preceding sub-section in favour of an officer or authority of the State or Territory performing functions in relation to the welfare of children; or

(d) an order of a kind referred to in the last preceding paragraph made by a court.”

Void marriages.

7. Section 18 of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“(2.) Paragraph (c) of the last preceding sub-section does not apply in relation to—

(a) a marriage solemnized under the *Marriage (Overseas) Act 1955*, or that Act as amended, including a marriage to which section twenty-four of that Act applied, or solemnized under Part V. of the *Marriage Act 1961*; or

(b) any other marriage recognized in Australia by virtue of the *Marriage Act 1961* or regulations made under that Act.”.

Marriage of persons within prohibited degrees of affinity.

8. Section 20 of the Principal Act is amended by omitting from sub-section (6.) the words “expenses of” and inserting in their stead the words “fees and allowances to”.

9. Section 39 of the Principal Act is repealed and the following sections are inserted in its stead:—

Condonation or connivance to be an absolute bar to relief.

“39. A decree of dissolution of marriage shall not be made upon a ground specified in any of paragraphs (a) to (k), inclusive, of section twenty-eight of this Act if—

(a) the petitioner has condoned the ground and the ground has not been revived; or

(b) the petitioner has connived at the ground.

Presumption as to condonation to be rebuttable.

“39A. For the purposes of any provision of this Part referring to condonation, any presumption of condonation that arises from the continuance or resumption of sexual intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative intent to condone.”.

10. After section 41 of the Principal Act the following section is inserted:—

Effect of cohabitation with a view to reconciliation.

“41A.—(1.) For the purposes of section thirty-nine of this Act, a ground shall not be deemed to have been condoned, and, for the purposes of sub-section (3.) of section thirty-seven of this Act and of section forty-one of this Act, adultery of the petitioner shall not be deemed to have been condoned, by reason only of a continuation or resumption of cohabitation between the parties

(whether with or without acts of sexual intercourse between them) for one period not exceeding three months if the court is satisfied that—

- (a) the cohabitation was continued or resumed, as the case may be, with a view, on the part of the party to whom condonation might otherwise be attributed, to effecting a reconciliation; and
- (b) a reconciliation was not effected during that period.

“(2.) For the purposes of proceedings on the ground specified in paragraph (b) of section twenty-eight of this Act, where—

- (a) before the desertion had continued for two years, the parties, on one occasion, resumed cohabitation (whether with or without acts of sexual intercourse between them), but the deserting party, within a period of three months after the resumption of cohabitation, again, without just cause or excuse, wilfully deserted the other party; and
- (b) the court is satisfied that—

- (i) the resumption of cohabitation was with a view, on the part of the deserted party, to effecting a reconciliation; and
- (ii) a reconciliation was not effected during the period of cohabitation,

the periods of desertion before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of desertion.

“(3.) For the purposes of proceedings on the ground specified in paragraph (m) of section twenty-eight of this Act, where—

- (a) since the separation, the parties, on one occasion, resumed cohabitation (whether with or without acts of sexual intercourse between them), but, within a period of three months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the petition; and
 - (b) the court is satisfied that—
- (i) the resumption of cohabitation was with a view, on the part of either party, to effecting a reconciliation; and
 - (ii) a reconciliation was not effected during the period of cohabitation,

the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

“(4.) For the purposes of the preceding provisions of this section, a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

“(5.) The operation of this section extends to things that occurred before the commencement of this section.”

Effect on
rights to sue,
devolution
of property, &c.

11.—(1.) Section 55 of the Principal Act is amended by inserting after sub-section (2.) the following sub-section:—

“(2A.) The last preceding sub-section does not derogate from any jurisdiction of a court under a law of a State or Territory of the Commonwealth to make orders affecting the rights of persons in respect of property as to which a person dies intestate.”

(2.) The operation of the amendment made by the last preceding sub-section extends to decrees made, and property of persons who died, before the commencement of this Act.

Decree absolute
where children
under sixteen
years, &c.

12.—(1.) Section 71 of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

“(1.) A decree *nisi* of dissolution of a marriage or of nullity of a voidable marriage, being a decree made on or after the date of commencement of the *Matrimonial Causes Act 1965*, does not become absolute unless the court, by order, has declared that it is satisfied—

(a) that there are no children of the marriage in relation to whom this section applies; or

(b) that the only children of the marriage in relation to whom this section applies are the children specified in the order and that—

(i) proper arrangements in all the circumstances have been made for the welfare of those children; or

(ii) there are special circumstances by reason of which the decree *nisi* should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

“(1A.) For the purposes of the last preceding sub-section, the court shall, where the circumstances make it appropriate to do so, treat the welfare of a child as including its advancement and education.”

(2.) Subject to the next succeeding sub-section, section 71 of the Principal Act continues to apply in relation to a decree *nisi* made before the date of commencement of this Act.

(3.) In relation to a decree *nisi* made before the date of commencement of this Act, section 71 of the Principal Act has effect, and shall be deemed to have had effect, as if the only children of the marriage who are or were under the age of sixteen years at the date of the decree *nisi* are or were the children of the marriage specified in the petition (either as originally filed or as amended) and appearing from the petition not to have attained the age of sixteen years before the date of the decree *nisi*.

13.—(1.) Section 72 of the Principal Act is amended—

When decree becomes absolute.

- (a) by omitting from sub-section (1.) the words “ where the last preceding section applies in relation to a decree *nisi*, the decree *nisi* ” and inserting in their stead the words “ a decree *nisi* made on or after the date of commencement of the *Matrimonial Causes Act 1965* ”;
- (b) by omitting sub-section (2.);
- (c) by omitting from paragraph (b) of sub-section (4.) the words “ sub-section (1.) or (2.) of this section ” and inserting in their stead the words “ sub-section (1.) of this section ”;
- (d) by omitting from paragraph (a) of sub-section (6.) the words “ an appeal, application for leave to appeal or intervention, against or arising out of—” and inserting in their stead the words “ an appeal or application for leave to appeal against, or an intervention or application for leave to intervene relating to—”; and
- (e) by adding at the end thereof the following sub-section:—
 - “ (7.) For the purposes of this section, where an application for leave to appeal or to intervene, or for a re-hearing, is granted, the application shall be deemed not to have been determined or discontinued so long as—
 - (a) the leave granted remains capable of being exercised; or
 - (b) an appeal, intervention or re-hearing instituted in pursuance of the leave is pending.”.

(2.) Section 72 of the Principal Act continues to apply in relation to a decree *nisi* made before the date of commencement of this Act.

14. Section 88 of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Execution of deeds, &c., by order of court.

“ (1.) Where—

- (a) an order under this Part has directed a person to execute a deed or instrument; and

(b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the court under this sub-section,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.”.

Power of court to make orders on dismissal of petition.

15. Section 89 of the Principal Act is amended by inserting in sub-sections (1.) and (2.), after the word “Part”, the words “in favour of the petitioner”.

16. Section 101 of the Principal Act is repealed and the following section inserted in its stead:—

Convictions for crimes to be evidence.

“101.—(1.) In any proceedings under this Act, evidence that a party to a marriage has been convicted, whether in Australia or elsewhere, of a crime is evidence that the party did the acts or things constituting the crime.

“(2.) In proceedings under this Act, a certificate of the conviction of a person of a crime by a federal court, a court of a State or Territory of the Commonwealth or a court of any part of the Commonwealth of Nations, being a certificate purporting to be signed by the Registrar or other proper officer of that court, is evidence of the fact of the conviction and of any particulars of the crime or of the conviction, including the date on which the crime was committed, and of any sentence of imprisonment imposed, that are included in the certificate.”.

Summary enforcement of orders for maintenance.

17. Section 105 of the Principal Act is amended by omitting from sub-section (1.) the words “an order for maintenance of a deserted wife” and inserting in their stead the words “a similar order for maintenance”.

Service of process.

18. Section 121 of the Principal Act is repealed.

Rules.

19. Section 127 of the Principal Act is amended—

(a) by inserting after paragraph (e) the following paragraph:—

“(ea) providing for the manner of service of process of a court under this Act, and for dispensing with such service;”; and

(b) by omitting from sub-section (4.) the word “extend” and inserting in its stead the word “extends”.